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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,231	06/20/2003	Andrew E. McPherson	77004	9158
48940	7590	01/10/2006		
FITCH EVEN TABIN & FLANNERY 120 S. LASALLE STREET SUITE 1600 CHICAGO, IL 60603-3406			EXAMINER PEARSE, ADEPEJU OMOLOLA	
			ART UNIT 1761	PAPER NUMBER

DATE MAILED: 01/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/601,231	MCPHERSON ET AL.	
	Examiner	Art Unit	
	Adepeju Pearse	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-54 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-54 is/are rejected.
- 7) ☒ Claim(s) 8-16 and 29 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____   | 6) <input type="checkbox"/> Other: ____                                     |

## DETAILED ACTION

### *Claim Objections*

1. Claim 29 recites the word "includes" twice. Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

2. Claims 6 and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 6 and 7 recites the limitation "method of claim 1 and 6 " in line

1. Claim 1 is a product claim not a method claim. There is insufficient antecedent basis for this limitation in the claim.

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
4. Claims 1-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howard et al (U.S. Pat. No. 5,332,587) in view of Denhartog et al (U.S. Pat. No. 5,747,091). With regard to claims 1-3, 9-11 and 17-19, Howard et al disclose acid stabilized pasta having a pH below about 4.6 (abstract, col 4 lines 6-7). However, Howard et al failed to disclose adding a high-intensity sweetener. Denhartog et al teach sweetened extruded products such as potato sticks (col 3 line 9) using high intensity sweeteners such as sucralose at a range of 0.01 to 0.2% (col 3 lines 56-57) in order to provide sugar-free foods for consumers. Denhartog et al also teach that the content of the sweetener may vary depending upon the desired level of sweetness. It would have been obvious to one of ordinary skill in the art to modify Howard et al with Denhartog et al by incorporating a high intensity sweetener in the acid stabilized product not only as a sweetener to improve flavor, but also to provide sugar-free food choices for consumers.

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5. With regard to claims 4-5, 12-13, 20-21, 30-31, 43-44 and 51-52, Howard et al disclose food acceptable acids including phosphoric acid, fumaric acid, malic acid, lactic acid, citric acid, tartaric acid, acetic acid and propionic acid (col 8 lines 30-34).
6. With regard to claims 6-7, 14-15, 22-23, 32-33 and 53-54, Howard et al disclose an acidified pasta product.
7. With regard to claims 8 and 16, Howard et al disclose a method of preparing pasta from dough made from any suitable material such as flour, corn, rice etc with water (col 4 lines 53-58). The pasta can be any desired shape (col 4 line 66) and it is cooked in acidified water (col 5 lines 16-20). In addition Howard et al further disclose that to treat with acid (s) refers to treatment in any way suitable for effecting intimate contact between the pasta material and the acid (s), for example, by boiling pasta material in acidified water, by incorporating the acid (s) directly in the pasta material during formulation, by soaking pasta dough in acidified water etc (col 5 lines 13-20). However, Howard et al failed to disclose adding an effective amount of a high-intensity sweetener. Denhartog et al teach sweetened extruded products such as potato sticks (col 3 line 9) using high intensity sweeteners such as sucralose at a range of 0.01 to 0.2% (col 3 lines 56-57) in order to provide sugar-free foods for consumers. Denhartog et al also teach that the amount of sweetener may vary depending upon the desired level of sweetness, therefore it would not have involved an inventive step to increase or decrease the amount of sweetener to a range as recited by applicant. It would have been obvious to one of ordinary skill in the art to modify Howard et al with Denhartog et al by incorporating a high intensity sweetener in the acid stabilized product not only as a sweetener to improve flavor, but also to provide sugar-free food choices for consumers.

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8. With regard to claims 24-29, Howard et al disclose an acid-stabilized pasta comprising a food-acceptable acid (abstract). In addition, Howard et al disclose that the typically the pH of the pasta is in the range of about 3.8-4.6 (col 9 lines 22-23) and that one skilled in the art would be able to balance the pH level and amount of acid used to ensure that the pasta is shelf-stable and has substantially no acid flavor notes (col 9 lines 28-32). However, Howard et al failed to disclose adding a high intensity sweetener. Denhartog et al teach sweetened extruded products such as potato sticks (col 3 line 9) using high intensity sweeteners such as sucralose at a range of 0.01 to 0.2% (col 3 lines 56-57) in order to provide sugar-free foods for consumers. Denhartog et al also teach that the amount of sweetener may vary depending upon the desired level of sweetness, therefore it would not have involved an inventive step to increase or decrease the amount of sweetener to a range as recited by applicant. It would have been obvious to one of ordinary skill in the art to modify Howard et al with Denhartog et al by incorporating a high intensity sweetener in the acid stabilized product not only as a sweetener to improve flavor, but also to provide sugar-free food choices for consumers.

9. With regard to claims 34-35, Howard et al disclose a method of preparing acid-stabilized pasta by incorporating the acid in the pasta dough, or soaking, or cooking the dough in an aqueous solution containing a food acceptable acid (col 7 lines 63-67). Also, Howard et al disclose precooking the pasta for about 5-20minutes (col 8 lines 51-68). In addition Howard et al disclose that sugar and other flavorings may be added in the cooking medium/brine (col 8 lines 41-43) but failed to disclose a high-intensity sweetener. Denhartog et al teach sweetened extruded products such as potato sticks (col 3 line 9) using high intensity sweeteners such as sucralose (col 3 lines 56-57) in order to provide sugar-free foods for consumers. It would have

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been obvious to one of ordinary skill in the art to modify Howard et al with Denhartog et al by incorporating a high intensity sweetener in the acid stabilized product not only as a sweetener to improve flavor, but also to provide sugar-free food choices for consumers.

10. With regard to claims 36-41 and 45-46, Howard et al disclose a method of preparing acid-stabilized pasta by boiling in an aqueous solution containing a food acceptable acid at temperatures between 90°C and 100°C for about 5-20minutes (col 8 lines 51-68). In addition Howard et al disclose that sugar and other flavorings may be added in the cooking medium (col 8 lines 41-43) but failed to disclose a high-intensity sweetener. Denhartog et al teach sweetened extruded products such as potato sticks (col 3 line 9) using high intensity sweeteners such as sucralose at a range of 0.01 to 0.2% (col 3 lines 56-57) in order to provide sugar-free foods for consumers. Denhartog et al also teach that the amount of sweetener may vary depending upon the desired level of sweetness, therefore it would not have involved an inventive step to increase or decrease the amount of sweetener to a range as recited by applicant. It would have been obvious to one of ordinary skill in the art to modify Howard et al with Denhartog et al by incorporating a high intensity sweetener in the acid stabilized product not only as a sweetener to improve flavor, but also to provide sugar-free food choices for consumers.

11. With regard to claim 42, Howard et al disclose that typically the pH of the pasta is in the range of about 3.8-4.6 (col 9 lines 22-23).

12. With regard to claims 47-50, Howard et al disclose acid stabilized pasta having a pH below about 4.6 (abstract, col 4 lines 6-7). Also, Howard et al disclose the pasta pH is low enough to result in the pasta maintaining its resistance to microorganisms (col 7 lines 64-68, col 8 line 1). In addition Howard et al disclose that sugar and other flavorings may be added in the

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cooking medium (col 8 lines 41-43) but failed to disclose a high-intensity sweetener. Denhartog et al teach sweetened extruded products such as potato sticks (col 3 line 9) using high intensity sweeteners such as sucralose at a range of 0.01 to 0.2% (col 3 lines 56-57) in order to provide sugar-free foods for consumers. Denhartog et al also teach that the amount of sweetener may vary depending upon the desired level of sweetness, therefore it would not have involved an inventive step to increase or decrease the amount of sweetener to a range as recited by applicant. It would have been obvious to one of ordinary skill in the art to modify Howard et al with Denhartog et al by incorporating a high intensity sweetener in the acid stabilized product not only as a sweetener to improve flavor, but also to provide sugar-free food choices for consumers.

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adepeju Pearse whose telephone number is 571-272-8560. The examiner can normally be reached on Monday through Friday, 8.00am - 4.30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.




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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Peju Pearse  
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